

Discussion topic

1. Reparation Exercise

At the end Chapter 6 we provided a 'colour association' exercise. We reproduce this here.

Do the following colour association test:

- *without* taking time to think in any conscious or considered way
- decide what colour you think of when focussing on the word 'reparation'.

Comment

In our experience, students have responded with a range of colours that they associate with reparation. Some have thought of green; 'explained' afterwards as having connotations of spring and new growth. Subconsciously, these students may have conceptualised reparation as a process that allows participants to experience positive new beginnings. Other students have thought of red, perhaps, they suggest, because of associations with 'being in the red' and notions of the paying back of a debt, or giving what is due to another. Others, possibly because of the same association with debts repaid, 'saw' reparation as black, though this may also have signified loss and punishment. Yellow and blue have been other associations, stemming, it was believed, from notions of brighter, new, 'blue skies' ways of dealing with, and thinking, about offending. Purple - perhaps a more considered option - mixed the red of punishment with the blue of harmony and reconciliation. This wide range contrasts with the unanimity of responses when asked what colour is associated with 'dangerousness' in sentencing, when the response is nearly always red or black, with connotations of blood, danger notices or dark, threatening situations.

Thinking about reparation, and making amends more generally, in this way emphasizes the disparate theoretical bases for those reparative options available at, or instead of, the sentencing stage of the criminal process. Whilst restorative justice may be the obvious

justification for such options, some, as Chapter 6 notes, have not been so theorised. Most also remain alongside or within a largely retributivist system.

2. Sentencing exercise

We also provided a case study with the following facts:

Ade, a student aged 20, worked on Saturdays in the local newsagents until the proprietor - Mr B - cut down on part-time staff. Because she knew about a dodgy window catch she got into the shop one night and took several boxes of crisps and chocolate. She sold these to a local youth club for £50 (having been asked to get new supplies), saying that she had lost the till receipt. She was found guilty of burglary at the local magistrates' court. She has no previous convictions.

You were asked to decide what outcome is appropriate for Ade, assuming all relevant sections of the Criminal Justice Act 2003 are in force. You might refer to the sentencing checklist in Chapter 3 (section 3.3.1) and consider, in particular, any restorative options.

The normal 'just deserts' approach to sentencing Ade applies here as there is no indication that the Mental Health Act 1983 options or the special provisions for 'dangerous offenders' apply. Further, as this is Ade's first burglary offence and is not in relation to a domestic property the 'three strikes' provision in the PCCSA 200 section 111 does not apply. You need to know that the maximum penalty for the offence of burglary of non-residential premises is 10 years but that the sentencing powers of the Magistrates' Courts are limited and that recent Court of Appeal guidance on the more serious offence of domestic burglary (*R v McInerney; R v Keating* 2002) suggested that a community sentence would be appropriate for most first time burglars (see Chapter 3).

Whilst there is an element of breach of trust, the amount taken was small and the planning minimal. There are also no previous convictions and Ade is relatively young. If Ade had worked in an electronics factory and had stolen goods worth £5000 then the offence would be treated as more serious because of the amount taken. The magistrates could consider the options open to them in the requirements that can be added to a community order if they considered the offence to be serious enough to justify such a sentence (CJA 2003 section 147-8 and 177). They might select an unpaid work

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requirement or an attendance centre requirement. If they considered the offence was not sufficiently serious for a community sentence they would impose a fine. Whatever they decide they MUST impose a compensation order or give reasons why they are not doing so. In this case the compensation would be for the amount taken and for any damage done in entering the property. In relation to theft of goods worth £5000 the difficulty would be – if they could not be recovered because Ade had sold them at a fraction of their value - the calculation of a compensation order that Ade could realistically pay over a period of 12, or exceptionally 24, months.